April 19, 2013

VIA ECFS

Chairman Julius Genachowski
Commissioner Robert McDowell
Commissioner Mignon Clyburn
Commissioner Jessica Rosenworcel
Commissioner Ajit Pai
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CG Docket No. 03-123; Structure and Practices of the Video Relay Service, CG Docket No. 10-51*

Dear Chairman Genachowski and Commissioners McDowell, Clyburn, Rosenworcel, and Pai:

Convo Communications, LLC ("Convo"), CSDVRS, LLC (d/b/a "ZVRS") and Hancock, Jahn, Lee & Puckett, LLC (d/b/a Communication Axess Ability Group, "CAAG") (collectively, "Competitive Providers") jointly submit this letter in the above-referenced proceedings to express their consensus views. The Competitive Providers understand that the Federal Communications Commission ("Commission") currently is considering a further substantial reduction of the per-minute video relay service ("VRS") rates paid to non-dominant VRS providers, and also is contemplating adopting significant structural changes to the VRS regulatory framework.

As further discussed herein, there is no evidence that non-dominant providers currently are overcompensated. Therefore, a substantial reduction in the rates applicable to non-dominant providers may severely undermine the ability of these providers to compete on a service-quality basis with the dominant provider, Sorenson Communications, Inc. ("Sorenson"). Further, any substantial near-term rate reductions prior to the implementation of new and sweeping regulatory reforms by the Commission is inappropriate given the complete lack of available data regarding the costs that such reform will have on non-dominant providers. Therefore, the Competitive Providers urge the Commission to maintain the current tiered rates applicable to non-dominant providers and only to implement any new rate reductions on a gradual basis over several years after the non-dominant providers have implemented any new Commission regulatory requirements.

I. The Commission Should Not Adopt an Unsustainable Rate for Non-Dominant Providers

The per-minute VRS rate paid to non-dominant providers should be set at a level that enables them to effectively compete with the dominant provider, Sorenson, and to earn an appropriate rate of return. By contrast, the adoption by the Commission of unsustainable rates will result in harm to the quality-of-service offered by VRS providers, incentivize harmful cost-cutting, and cause a further reduction to the already small number of entities offering VRS, thereby leaving VRS users with a substandard choice of providers.[1]

The FCC Office of the Inspector General ("OIG") recently determined that certain of the non-dominant providers are properly compensated based on their reasonable and compensable VRS expenditures and that the dominant provider is overcompensated.[2] The Commission has not made a fact-based determination in this proceeding that any non-dominant provider is overcompensated. In the absence of evidence that the non-dominant providers are being overcompensated by the TRS Fund, there is no justification to reduce their VRS rates. In this instance, however, there is evidence that non-dominant providers are *not* being overcompensated—the FCC's OIG made such a determination based on its audit of Purple and

[1] The Competitive Providers have explained in detail that the impact radically reduced VRS rates would have on non-dominant providers. *See generally* Comments of Convo Communications, LLC, CG Docket Nos. 03-123 and 10-51, at 2-13 (filed Nov. 14, 2012); Reply Comments of Convo Communications, LLC, CG Docket Nos. 03-123 and 10-51, at 2-11 (filed Nov. 29, 2012) ("Convo Reply Comments"); Comments of CSDVRS, LLC, CG Docket Nos. 10-51 and 03-123 (filed Nov. 14, 2012) ("ZVRS Comments"); Reply Comments of CSDVRS, LLC, CG Docket Nos. 10-51 and 03-123 (filed Nov. 29, 2012); Comments of Hancock, Jahn, Lee & Puckett, LLC d/b/a Communication Axess Ability Group, CG Docket Nos. 10-51 and 03-123, at 5-6 (filed Nov. 14, 2012).

[2] See, *e.g.*, Letter from Jeff Rosen, General Counsel, CSDVRS, LLC, to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 03-123 and 10-51, at 3 (Dec. 17, 2012) ("The 2012 preliminary audit report conducted on behalf of the Commission's Office of Inspector General indicates that ZVRS was not overcompensated for VRS services provided in 2011, concluding that 'TRS funds received by CSDVRS for VRS were for the reasonable costs of providing VRS.'"); Reply Comments of Purple Communications, Inc., CG Docket Nos. 03-123 and 10-51, at 12 (filed Nov. 29, 2012) ("[T]o Purple's knowledge, the record is devoid of any evidence that smaller providers are overpaid. To the contrary, the same third party auditor concluded in its recent audit report of Purple that Purple was not overcompensated."). In contrast, the OIG audit of Sorenson concluded that Sorenson was overcompensated. *See* Office of Inspector General Memorandum (Sept. 27, 2012), *available at* http://transition.fcc.gov/oig/Sorenson_Audit_Report_09272012_Redacted.pdf ("TRS funds received by Sorenson for VRS did not compensate for only the reasonable costs of providing access to VRS.").

ZVRS.[3] Rather than justifying a reduction in the VRS rates paid to non-dominant providers, this weighs heavily in favor of the Commission refraining from imposing rate reductions on these providers.

II. The Commission Should Not Establish VRS Rates That Competitively Disadvantage Non-Dominant VRS Providers Relative to Sorenson and Should Retain a Tiered Rate Structure

Over the years, the non-dominant providers have strived to reduce their costs—in part through their efforts to gain scale—while simultaneously driving service-quality competition both with each other and, more importantly, with Sorenson. At minimum, the Commission should aim to preserve this robust service-quality competition accomplished by the smaller, competitive providers, and ideally should foster such competition. However, the Competitive Providers understand that the Commission is considering adopting VRS rates that would have the opposite effect—*i.e.,* rates that would result in a greater percentage reduction to the per-minute compensation paid to non-dominant providers compared to the percentage reduction in the per-minute compensation paid to Sorenson. Any such action by the Commission will competitively harm the non-dominant providers relative to Sorenson, thereby providing Sorenson with a further competitive advantage and further entrenching Sorenson's dominant market position.

Ensuring that competitive VRS providers can effectively compete and thrive is the Commission's best approach to fulfill its statutory mandate under Title IV of the Americans with Disabilities Act—to "encourage … the use of existing technology and . . . not discourage or impair the development of improved technology."[4] Accordingly, the Commission has recognized the need to sustain consumer choice and competition in setting tiered VRS rates.[5] Further, consumer groups have emphasized that such competition ultimately serves VRS users. The Consumer Groups' TRS Policy Statement on Functional Equivalency provides that "intense competition among a number of qualified vendors in the telecommunications relay services market … give[s] the TRS user population a range of choices in features and service within any one form of TRS."[6] The Competitive Providers have been at the forefront of developing new

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[3] OIG currently is undertaking an audit of Convo's VRS costs and the audit has not yet been completed.

[4] 47 U.S.C. § 225(d)(2).

[5] *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order and Declaratory Ruling, 22 FCC Rcd 20140 ¶ 53 (2007) ("*2007 TRS Rate Methodology*") ("[U]sing three tiers is appropriate to ensure both that, in furtherance of promoting competition, the newer providers will cover their costs, and the larger more established providers are not overcompensated due to economies of scale."

[6] *Consumer Groups' TRS Policy Statement – Functional Equivalency of Telecommunications Relay Services: Meeting the Mandate of the Americans with Disabilities Act*, at 9 (attached to Notice of *Ex Parte* of Telecommunications for the Deaf and Hard of Hearing, Inc. *et al.*, CG Docket Nos. 03-123 and. 10-51 (filed Apr. 12, 2011).

and innovative VRS products for deaf and hard of hearing VRS users, as well as driving service-quality improvements throughout the VRS industry. These substantial public interest benefits more than offset any small additional costs to the TRS Fund resulting from the smaller scale of the non-dominant providers and their lack of access to the economies of scale that have driven Sorenson's market dominance.[7]

Accordingly, the Commission should ensure that any adjustment to VRS rates does not have a disproportionally adverse impact on non-dominant providers. Although, as discussed above, the Competitive Providers believe that any reduction in their VRS rates is inappropriate due to the lack of evidence that they are overcompensated, any such reduction that the Commission ultimately determines to impose should be no greater on a percentage basis than rate reductions imposed on Sorenson. The Commission should not provide Sorenson with yet another competitive advantage, which would harm consumer choice and thereby would be directly contrary to the statutory mandate of functional equivalence.

Moreover, it is crucial to the survival of non-dominant providers and the promotion of meaningful competition in the VRS industry that the Commission retains a tiered rate structure.[8] As noted above, the tremendous innovation seen in the VRS industry in recent years was driven by the non-dominant providers. Further, the Competitive Providers continue to strive to grow their VRS businesses and thereby capture market share from Sorenson and increase their economies of scale. However, this cannot occur overnight due to the dramatic imbalance in the VRS market. Given the staggering advantages of Sorenson, which is reported to have a market share that is almost four times greater than the market share of all other VRS providers

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[7] As a practical matter, ensuring that competitive providers can survive, grow, and provide vital service-quality competition would not have a significant effect on the growth of the TRS Fund as compared to the benefits of such competition. In April 2012, the TRS Administrator projected that the overall VRS funding requirement would be approximately $588 million. *See* Rolka Loube Saltzer Associates LLC, Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate, CG Docket No. 03-123, at Exh. 2 (filed Apr. 30, 2012). Of that $588 million, less than a quarter of the projected funding was allocated to the Tier 1 and Tier 2 providers. In contrast, Tier 3 represents *77% of all VRS funding.*

[8] ZVRS has proposed for the Commission to widen the existing three VRS compensation tiers as follows: up to 100,000 minutes; 100,001-1,000,000 minutes; and minutes exceeding 1,000,000. *See e.g.*, ZVRS Comments at 17 ("The expansion of Tier I and Tier II will encourage smaller providers to grow and innovate and ultimately offer a better service for the VRS consumer; … the economies of scale would be more fully realized at a monthly one million minute threshold."). In addition, Purple also has proposed for certain modifications to the VRS rate tiers. *See* Comments of Purple Communications, Inc., CG Docket Nos. 10-51 and 03-123, at 8 (filed Apr. 16, 2013) (proposing "a three-tier rate structure that includes tiers of 0-500,000 minutes per month, 500,000-2,000,000, and 2,000,000 and above") ("Purple Comments"). Convo and CAAG do not object to either of these proposals. By contrast, however, each of the Competitive Providers strongly opposes Purple's support for a transition to a unitary VRS rate applicable to all VRS providers. *See id.* at 1, 8.

combined,[9] Sorenson's per-minute costs are necessarily lower than the costs of the non-dominant providers. This disparity must be reflected in the relative VRS rates adopted by the Commission. As explained above, any small increase in costs to the TRS Fund caused by a tiered rate structure is more than offset by the public interest benefits attributable to the success of non-dominant providers. The Commission should avoid taking any action that will further entrench or even increase Sorenson's market share.

III. The Commission Should Not Adopt Further Rate Reductions While the VRS Industry is Implementing Sweeping Changes to the VRS Regulatory Framework Imposed by the Commission

VRS providers only recently completed the implementation of substantial structural reforms to their businesses required by the Commission's 2011 mandates aimed at fostering further competition in the VRS marketplace and eliminating fraud, waste, and abuse.[10] In addition, the Competitive Providers understand that the Commission is likely to adopt new and sweeping further changes to the VRS regulatory regime in the near future consistent with its pending rulemaking proposals.[11] Given the broad changes to the VRS industry recently mandated by the Commission and those likely to be adopted by the Commission in the near future, now is not the time to significantly reduce VRS rates. Prior to any significant rate reductions, the Commission should provide the VRS industry with an opportunity to adjust to the wholesale change to the VRS regulatory framework adopted (or soon to be adopted) by the Commission. Any new rate reductions could undermine the Commission's objectives underlying such reforms.

VRS providers are likely to face new and substantial short-term capital and operational costs to comply with any new modifications to the VRS regulatory framework. Until the Commission's new reforms are issued and implemented by VRS providers, the magnitude of these costs will remain unknown. Accordingly, it is inappropriate to significantly reduce the per-minute compensation paid to providers while simultaneously requiring these providers to make

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[9] *See* Request for Immediate Public Notice: VRS Providers May Not Discriminate Against Consumers Using Competing Service Providers In Their Ability to Leave a Video Mail Message filed by Purple Communications, Inc., CG Docket Nos. 10-51 and 03-123, at 3 (filed Apr. 11, 2013) ("Sorenson Communications, Inc. is the dominant provider of VRS, and controls over 80% of the VRS market.").

[10] *See generally Structure and Practices of the Video Relay Service Program*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 5545 (2011); *Structure and Practices of the Video Relay Service Program*, Second Report and Order and Order, 26 FCC Rcd 10898 (2011).

[11] *Additional Comment Sought on Structure and Practice of the Video Relay Service (VRS) Program and on Proposed VRS Compensation Rates*, Public Notice, 27 FCC Rcd 12959 (CGB 2012); *Structure and Practices of the Video Relay Service Program; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities,* Further Notice of Proposed Rulemaking, 26 FCC Rcd 17367 (2011).

substantial new investments in their businesses to comply with new regulatory requirements.[12] More fundamentally, however, VRS rates are intended to fairly compensate VRS providers for their costs of providing VRS service,[13] and the providers' forward-looking costs simply cannot be determined prior to the adoption by the Commission of additional changes to the VRS regulatory framework and the implementation of these changes by the providers.

Moreover, any new Commission-mandated regulatory expenditures pose a particular challenge for non-dominant providers as compared to Sorenson because the non-dominant providers have a far smaller revenue base over which to absorb these new and unpredictable costs. As small businesses, the Competitive Providers face greater challenges when the VRS regulatory landscape suddenly shifts due to persistent and wide-scale Commission reform efforts. The Competitive Providers require a stable and predictable funding mechanism to grow their market share and economies of scale so that they can provide further competition to Sorenson. Only revenue stability will ensure that non-dominant providers have an opportunity to realize a reasonable return on their investments while continuing to provide an ADA-compliant level of VRS.

Accordingly, the Competitive Providers request the Commission to delay any further rate reductions applicable to non-dominant providers until after the costs of complying with new regulatory requirements is known. Specifically, the Competitive Providers endorse Purple's proposed five-year timeline for the implementation of any reduction in rates applicable to non-dominant VRS providers, including Purple's proposed two-year "freeze" on non-dominant VRS rates after any initial rate reduction.[14] However, as indicated above, the Competitive Providers advocate postponing any near-term reduction in rates applicable to non-dominant providers. There is no evidence that non-dominant providers currently are overcompensated under the existing tiered rates and, in fact, the OIG found that certain such providers are not overcompensated. Thus, a potentially significant increase in the regulatory-compliance costs imposed on non-dominant VRS providers accompanied by a reduction in their compensation is inappropriate. In light of all of the recent regulatory changes affecting the VRS industry and the

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[12] See Convo Reply Comments at 5 ("Once these beneficial reforms have been implemented to improve functional equivalency, the Commission should reevaluate the VRS market to determine the rate structure that best achieves an appropriate balance, on the one hand, between fostering innovation and competition and, on the other hand, reducing the size of the TRS Fund."); ZVRS Comments at 3 ("Better data about VRS users will enable the Commission to more accurately understand customer usage trends and thus more effectively determine a rate which adequately sustains providers' ability to provide functionally equivalent services.").

[13] *See, e.g., 2007 TRS Rate Methodology* ¶ 25 ("[T]he compensation rate is not a 'price' that is charged to, and paid by, a service user, but rather a settlement mechanism to ensure that providers are compensated from the Fund for their actual reasonable costs of providing service.").

[14] *See* Purple Comments at 5-7.

new regulatory reforms likely to be adopted by the Commission in the short term, a substantial rate reduction at this time may prove debilitating to non-dominant providers.

IV. Conclusion

For the reasons set forth herein, the Competitive Providers jointly urge the Commission to refrain from further reducing at this time the VRS rates paid to non-dominant providers. Non-dominant providers should be compensated at a reasonable level to ensure that such providers can continue to provide service-quality competition to Sorenson and choices for consumers. Further, there is no evidence that the non-dominant providers currently are overcompensated, and it is clear that their costs only will increase in the future as the Commission imposes additional sweeping regulatory changes to the VRS industry. Accordingly, the Competitive Providers respectfully request the Commission to maintain a tiered rate structure and only to implement any new rate reductions gradually over several years as the new costs imposed on non-dominant providers are determined. This course of action by the Commission will preserve the public interest benefits of service-quality competition and the availability to the deaf and hard of hearing community of a choice of VRS products.

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